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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

WILLIAM LITTLE ANDERSON,

Defendant and Appellant.

B151156

(Super. Ct. No. YA021902)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Mark S. Arnold, Judge. Modified and, as so modified, affirmed with directions.

Jerry D. Whatley, under appointment by the Court of Appeal, for Defendant and
Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney
General, Pamela C. Hamanaka, Senior Assistant Attorney General, Lance W. Winters,
Supervising Deputy Attorney General, and Karen Bissonnette, for Plaintiff and
Respondent.

William Little Anderson appeals the judgment entered after conviction by jury of forgery of a check, possession of a forged driver's license, forgery of a driver's license and battery, a misdemeanor. (Pen. Code, §§ 470, 470b, 470a, 242.) The trial court found Anderson had six prior convictions within the meaning of the Three Strikes law and had served one prior prison term within the meaning of Penal Code section 667.5, subdivision (b). We order the award of custody credit corrected and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

This case has been the subject of two previous appeals. In B104523, filed October 13, 1998, we affirmed Anderson's convictions but remanded the matter to permit the trial court to exercise its discretion with respect to the originally imposed term of 51 years to life in state prison. In B133190, filed January 30, 2001, we remanded the case a second time to permit the trial court to reconsider the entire sentence, should it wish to do so, and to award custody credit for the days served awaiting resentencing. The trial court declined to reconsider the term imposed and gave Anderson credit for 2245 actual days served and 675 days of conduct credit.

CONTENTIONS

Anderson contends the trial court miscalculated the number of actual days served. The People concede the error but contend the trial court awarded excess conduct credit.

DISCUSSION

Anderson contends he served 2,520 actual days of custody prior to the current remand and thus is entitled to an additional 275 days of custody credit. The People

concede the abstract of judgment must be corrected to reflect the correct number of actual days served but contend the trial court's award of conduct credit must be reduced. It appears the People's concession, as well as their request for correction of the conduct credits, is well taken.

People v. Buckhalter (2001) 26 Cal.4th 20, 29-30, decided approximately a month after the second resentencing in this case, held the trial court must credit a defendant with the actual number of days served but only award custody credits earned prior to the initial sentencing. Once a defendant has been sentenced and delivered to the custody of the Director of Corrections, he or she remains in the constructive custody of the Director even during periods of temporary housing away from state prison to permit the defendant to participate in remand proceedings. Thus, a sentenced "inmate's accrual of term-shortening sentence credits can arise only under laws and rules specifically applicable to prisoners" (*Id.* at p. 30.)

Here, the trial court apparently awarded custody credits at the rate of 20 percent for Anderson's post-sentence custody. As noted in *Buckhalter*, these credits were inappropriate. Accordingly, the abstract of judgment must be corrected to reflect 728 days of actual presentence custody, plus 364 days of conduct credit attributable to that presentence custody, plus 1,792 days of actual post-sentence credit for a total of 2,884 days.

DISPOSITION

The judgment is ordered modified to reflect 728 days of actual presentence custody, plus 1,792 days of actual post-sentence custody, plus 364 days of conduct credit attributable to the presentence custody, for a total of 2,884 days and, as so modified, affirmed. The clerk of the superior court is directed to prepare and forward to the Department of Corrections an amended abstract of judgment.

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KLEIN, P.J.

We concur:

CROSKEY, J.

ALDRICH, J.